

PROFESSIONAL SERVICES AGREEMENT/LEGAL

This Professional Services Agreement/Legal (Agreement), made this first day of October, 2020, by and between the City of Nampa (CITY), Canyon County, Idaho, and, _____, hereinafter referred to as the City Attorney.

WHEREAS, the CITY, desires to obtain Legal services; the City Attorney agrees to perform various legal services delineated by this Agreement, the Administrative Policy regarding Legal Services (Administrative Policy) and their Request for Proposal (RFP) submission, all attached.

The City Attorney acknowledges that he/she have reviewed the scope of work listed in the RFP and agrees to perform the work in accordance with the terms of payment in their RFP submission, this Agreement and the Administrative Policy.

It is understood and agreed that the City Attorney is skilled in Idaho Municipal Law and will be required to perform the work under this Agreement and that the CITY relies upon the skill of the City Attorney to perform its work in a professional manner. The City Attorney thus agrees to perform its work, and the acceptance by the CITY does not release the City Attorney from any of the firm's professional responsibility.

It is mutually agreed by the parties that:

SECTION 1

SERVICES PROVIDED BY CITY

- 1.1 The following services are to be provided by the CITY without cost to the City Attorney.
 - A. The CITY will provide ongoing review of the City Attorney's work and timely consideration of legal issues at a time acceptable to both the CITY and the City Attorney.
 - B. The CITY will provide access to relevant records or working papers regarding the workings with the CITY regarding any legal issues.
 - C. The CITY will provide any word processing documents on memory sticks that is compatible with the Microsoft Office Suite.

SECTION 2

ADDITIONAL PROVISIONS

2.1 Billing

The City Attorney shall bill for the various services as completed and no more frequently than once per month. The amount of the bill shall be in accordance with the actual services completed, as outlined in this Agreement and the Legal Administrative Policy.

2.2 Indemnification

The City Attorney shall indemnify the CITY, its agents, officials, and employees, against all suits or claims that may be based on injury to persons or property and losses and expenses that are the result of a negligent act, error, or omission by the City Attorney or any person employed by the City Attorney in performance of its service.

2.3 Insurance Requirements

The City Attorney certifies that they are an independent contractor and shall acquire and maintain throughout the term of this contract the following insurance coverage:

- A. General Liability Certificate of Insurance at \$1,000,000
- B. Professional Liability Insurance (Errors and Omission) with a minimum limit of \$1,000,000.
- C. Workers Compensation and Employers Liability Insurance of \$1,000,000

The limits of said insurance shall not be deemed a limitation of the covenants to indemnify, and save and hold harmless the CITY; and if the CITY becomes liable for an amount in excess of the insurance limits, herein provided, the City Attorney covenants and agrees to indemnify and hold harmless the CITY from and for all such losses, claims, actions, or judgments for damages or liability to persons or property in accordance with Paragraph 2.2.

Note: The General Liability Certificate of Insurance shall name the CITY as an additional insured.

2.4 Independent Contractor

In all matters pertaining to this Agreement, the City Attorney shall be acting as an independent contractor, and neither the City Attorney, any officer, employee or agent of the City Attorney's Office will be deemed an employee of the CITY. The selection and designation of the personnel of the CITY in the performance of this Agreement shall be made by the CITY.

2.5 Notices

Any and all notices will be treated as duly delivered if the notice is personally delivered or deposited by postage paid, certified mail, with a return receipt requested, with the appropriate addresses as follows:

CITY

City of Nampa
Debra Rosen, City Clerk
411 3rd Street South
Nampa, ID 83651

CITY ATTORNEY

Name & Address Information

Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other in the manner herein provided.

2.6 Time is of the Essence

The parties hereto acknowledge and agree that time is of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.

2.7 Assignment

It is expressly agreed and understood by the parties hereto, that the City Attorney shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement.

2.8 Reports and Information

At such times and in such forms as the CITY may require, there shall be furnished to the CITY such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this Agreement and the Legal Administrative Policy.

2.9 Publication, Reproduction and Use of Material

No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or any other country. The CITY shall have unrestricted authority to publish, disclose and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement after payment has been made to the City Attorney.

2.10 Compliance with Laws

In performing the services required hereunder, the City Attorney shall comply with all applicable laws, ordinances, and codes of Federal, State, and Local governments.

2.11 Changes

The CITY may, from time to time, request changes in the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of the City Attorney's compensation, which are mutually agreed upon by and between the CITY and the City Attorney, shall be incorporated in written Amendments to this Agreement.

2.12 Termination for Cause

A. BY CITY - If, through any cause, the City Attorney shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the City Attorney violates any of the covenants, agreements, or stipulations of this Agreement, the CITY shall thereupon have the right to terminate this Agreement by giving written notice to the City Attorney of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. In such event, all finished or unfinished documents, data, photographs and reports prepared by the City Attorney under this Agreement shall, at the option of the CITY, become the City's property, and the City Attorney shall be entitled to receive just and equitable compensation for any work completed to the satisfaction of the CITY.

Notwithstanding the above, the City Attorney shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement by City Attorney, and the CITY may withhold any payments to the City Attorney until such time as the exact amount of damages due the CITY from the City Attorney is determined. This provision shall survive the termination of this Agreement and shall not relieve the City Attorney of its liability to the CITY for damages.

B. By the City Attorney – This Agreement may be terminated by the City Attorney as follows:
1) For cause, if the CITY materially breaches this Agreement through no fault of the City Attorney and the CITY neither cures such material breach nor makes reasonable progress toward cure within fifteen (15) days after City Attorney has given written notice of the alleged breach to the CITY, or 2) Upon five (5) days' notice if work under this Agreement has been suspended by the CITY for more than 30 days in the aggregate.

2.13 Termination for Convenience of the CITY

The CITY may terminate this Agreement at any time by giving at least fifteen (15) days' notice in writing to the City Attorney. If the Agreement is terminated by the CITY as provided herein, the City Attorney will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the City Attorney covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the City Attorney, Section 2.12 hereof relative to termination shall apply.

2.14 Non-prevailing Party Responsible for Reasonable Costs

In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the non-prevailing party shall pay the prevailing party such reasonable amounts of fees, costs and expenses, including attorneys' fees, as may be set by the Court.

2.15 Binding of Successors

The CITY and the City Attorney each binds itself, its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the CITY nor the City Attorney shall assign, sublet or transfer his/her interest in this Agreement.

2.16 Term

The term for this Agreement shall be three fiscal years, commencing upon execution of this contract, with the option of two (2) additional one (1) year terms, for a total of five (5) years.

2.17 Renewal

This Agreement may be renewed, by written agreement, for two (2), one (1) year terms, that is mutually agreeable to both parties. The terms of the renewal may include an equitable adjustment of fees and may include change in the key personnel listed in the RFP response. The continuation of the terms, conditions, and provisions of this contract beyond the original three-year term is subject to approval of and ratification by the City Council.

2.18 Key Personnel

Unless otherwise agreed to by the CITY, the City Attorney agrees to utilize the key personnel for legal issues as outlined in the RFP response, this Agreement and the Administrative Policy. Any change in personnel shall be approved by the Mayor or his/her assigned representative.

2.19 Extent of Agreement

This Agreement, RFP Response and the Administrative Policy represents the entire and integrated Agreement between the CITY and the City Attorney and supersedes all prior negotiations, representations or agreements, either written or oral.

2.20 Amendments

This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by written agreement, executed by both parties.

2.21 Governing Law

Unless otherwise specified, this Agreement shall be governed by the laws of the State of Idaho and any litigation shall be in the Third Judicial District Court of the State of Idaho with venue in Canyon County, Idaho.

2.22 Non-Exclusive Agreement

The City Attorney acknowledges that the Agreement shall not be interpreted to limit the City's authority to retain the services of outside counsel to perform legal services, as a result of the City's need for special expertise or otherwise.

SECTION 3

PAYMENT TO THE CITY ATTORNEY

3.1 Hourly Rates and Reimbursable Costs

Note: These costs will be outlined in the RFP submission (due at 5 P.M. on August 19, 2020).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date so indicated.

City of Nampa

City Attorney's Name & Address

APPROVED BY:

Debbie Kling, Mayor

Date

Signature

Date

ATTEST:

Print Name & Title

Deborah Rosin, City Clerk

Date

Signature

Date

Print Name & Title